IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14026 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AVDESH ALIAS YOGESH MEMBERSINGSIKARVAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14026 of 2004

MR PANDYA FOR MS KRISHNA U MISHRA for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No.3

RULE SERVED for Respondent No.1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 18/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed by the Police Commissioner, Ahmedabad City on 16.07.2004 in exercise of powers conferred upon him

under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ["PASA Act" for short]. The petitioner is in detention and dangerous person within the meaning of the PASA Act from 16.07.2004, in pursuance of the above said order of detention.

2. The grounds of detention as placed on record reveal that the detaining authority relied upon two types of materials, firstly five criminal cases registered against the petitioner and secondly two incamera statements of the witnesses. Three cases on 14.06.2004, 23.06.2004 and 02.07.2004 came to be registered against the petitioner at Bapunagar Police Station under Sections 379 of the Indian Penal Code wherein it was alleged that the petitioner committed theft of two wheelers vehicle, two cases came to be registered, one before Naroda Police Station and second before Odhav Police Station on 05.07.2004 and 08.07.2004, both under Section 379 of the Indian Penal Code whereby also it was alleged that the petitioner committed theft in respect of two wheelers vehicle. The detaining authority exhaustively gone through the investigating papers in all the above five criminal cases. The detaining authority secondly relied upon two incamera statements recorded by the sponsoring authority on 14.07.2004 and verified by the detaining authority on 15.07.2004. One statement reveals an incident of 16.06.2004, while witness was standing at Thakkarbapanagar Highway Road, the petitioner approached and stated that the witness was keeping watch over the activity of stealing of two wheelers vehicle by the petitioner, and was providing information to the police. The petitioner started abuses to the witness and when witness stated that the suspicion of the petitioner was misplaced, the petitioner was excited and at public place started beating the witness. The residence of surrounding area including shop owners gathered there, but the petitioner took out the knife and threatened the crowd, so the crowd was disbursed. The traffic was disrupted and the area was terror stricken. The people feel insecurity. The second incident, which the second witness stated, occurred on 27.06.2004 when at about 6.00 P.M., the witness was doing his business at his business place, the petitioner approached the witness with one hero-honda splendor motor-cycle and forced the witness to keep hero-honda and give him advance of Rs.20,000/-. The witness found that the said hero-honda might be a stolen muddamal. He refused to keep the vehicle and to give advance money to the petitioner. The witness was thereupon dragged by the petitioner in a public place and was beaten, the residence of surrounding area including shop owners gathered there, but nobody came to rescue of

the witness, on account of fear of the petitioner. The petitioner with open knife abused the crowd and rushed towards the persons gathered, so the crowd was disbursed. The traffic was disrupted and the area was terror stricken. From the above material placed before the detaining authority, the detaining authority came to the subjective satisfaction that the petitioner was dangerous person within the meaning of PASA Act and his anti social activities were required to be prevented forthwith. The detaining authority reached to the conclusion that the petitioner was engaged in stealing two wheelers vehicle and was in habit of threatening innocent persons who became obstacle in his above illegal anti social activities. Therefore, the detaining authority passed an order of detention as aforesaid, which is under challenged in this petition.

3. Learned advocate Mr.Pandya for the petitioner and learned AGP Mrs.H.B.Punani, for the respondent No.3 were heard at length. The affidavit-in-reply as filed by the detaining authority and placed on record by the learned AGP, is also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by learned AGP, it appears that the petition can be dealt with and disposed of, examining only one ground, whether the order of detention is vitiated on account of non-application of mind by the detaining authority.

5. It is clear from the grounds of detention that when the order came to be passed against the petitioner for detention, the petitioner was in judicial custody, in all five criminal cases registered against him. The ground further denotes that right from 09.07.2004, the petitioner was under judicial custody in the said criminal cases. In this respect, the detaining authority came to the conclusion that though in all five criminal cases filed against the petitioner, he was under judicial custody, but at any time, the petitioner was likely to move bail application before the Court and on granting the bail, after releasing the petitioner, was likely to indulging any anti social activities.

6. The facts of the present case are squarely covered by the decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent material before the officer

passing the detention order that the detenu was likely to be released on bail, the inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and the detention order based on such material was liable to be quashed.

7. While in this case, when detention order came to be passed, not only the petitioner was in judicial custody, but he did not move any bail application at that juncture. Nothing is disclosed in the ground of detention that what material, the detaining authority relied upon to come to the conclusion that the petitioner was likely to move the bail application and was likely to be released on bail. As ruled by the Apex Court in the above said case of Amritlal (supra), there was no material, therefore, in the present case before the detaining authority to come to the conclusion that firstly, the petitioner was likely to move an application for bail and secondly that on moving such bail application, the petitioner was likely to be released on bail, the inference drawn by the detaining authority is not supported by any material. The subjective satisfaction, therefore, reached by the detaining authority in this respect is not legal, valid and in accordance with law. The order under challenge suffers from vice of non-application of mind and is required to be quashed and set aside on this ground alone.

8. In the result, in view of the above discussion, this Special Civil Application is allowed. The order passed on 16.07.2004 against the petitioner by the Police Commissioner, Ahmedabad City in exercise of powers conferred upon him under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner Avdhesh alias Yogesh Membersing Sikarvar is ordered to be set at liberty forthwith, if he is not required to be detained in Jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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